

HOUSE BILL NO. 494

INTRODUCED BY E. FRANKLIN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DEFERRED DEPOSIT LOAN LAWS; REVISING THE TERM LENGTH FOR THE LOANS; PROVIDING THAT CONSUMERS BE PERMITTED TO MAKE INCREMENTAL LOAN PAYMENTS; PROVIDING FOR THE DISCLOSURE OF PAYMENT AMOUNTS ON TYPICAL LOANS TO CONSUMERS; AUTHORIZING AN ADMINISTRATIVE FEE ON EACH LOAN AND LIMITING THE INTEREST ON LOANS TO 36 PERCENT A YEAR; CLARIFYING A LICENSEE'S LIABILITY FOR THE ACTS OF EMPLOYEES AND OTHER PERSONS; PROVIDING THAT A VIOLATION OF DEFERRED DEPOSIT LOAN LAWS DOES NOT HAVE TO BE INTENTIONAL TO BE SUBJECT TO CIVIL PENALTIES; AND AMENDING SECTIONS 31-1-715, 31-1-721, 31-1-722, 31-1-723, AND 31-1-724, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-1-715, MCA, is amended to read:

"31-1-715. Loan requirements. (1) (a) Each deferred deposit loan may not have a minimum term that ~~exceeds 31 days~~ is less than 2 weeks for each \$50 or portion of \$50 borrowed.

(b) (i) A consumer must be permitted to make payments on a loan in increments of at least \$5 at any time without charge.

(ii) The licensee shall give the consumer a dated receipt for each payment received that indicates the amount paid and the balance owing on the loan.

(2) The amount of the deferred deposit loan, exclusive of the administrative fee and interest allowed in 31-1-722(2), may not exceed \$300.

(3) The minimum amount of a deferred deposit loan is \$50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) Only the licensee may make an electronic deduction from the consumer's account. The licensee shall ensure that information obtained from the consumer about the consumer's account remains confidential.

(6) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

(7) The holder or assignee of any check written by a consumer in connection with a deferred deposit

1 loan takes the instrument subject to all claims and defenses of the consumer."

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3 **Section 2.** Section 31-1-721, MCA, is amended to read:

4 **"31-1-721. Required disclosures -- loan agreement.** (1) Before entering into a deferred deposit loan,
5 the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

6 (a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit
7 loan transaction;

8 (b) contains the schedule of all interest, including the rate of interest, and fees to be charged on
9 deferred deposit loans, with an example of the amounts that would be charged on a \$300 loan;

10 ~~(b)~~(c) includes a telephone number to the department's office that handles concerns or complaints by
11 consumers; and

12 ~~(c)~~(d) informs consumers that the department's office can provide information about whether a lender
13 is licensed and other legally available information.

14 (2) Licensees shall provide consumers with a written agreement on a form specified or approved by the
15 department that can be kept by the consumer, which must include the following information:

16 (a) the name, address, and phone number of the licensee making the deferred deposit loan and the
17 initials or other written means of identifying the individual employee who signs the agreement on behalf of the
18 licensee;

19 (b) the name, address, and phone number of the consumer obtaining the deferred deposit loan;

20 (c) an itemization of the fees and interest charges to be paid by the consumer;

21 (d) a clear description of the consumer's payment obligations under the loan; and

22 (e) in a manner that is more conspicuous than the other information provided in the loan document and
23 that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for
24 collection of this loan". The statement must be located immediately preceding the signature of the consumer."
25

26 **Section 3.** Section 31-1-722, MCA, is amended to read:

27 **"31-1-722. Prohibited and permitted fees -- attorney fees and costs.** (1) A licensee may not charge
28 or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

29 (2) (a) A licensee may ~~not~~ charge a an administrative fee for each deferred deposit loan entered into
30 with a consumer that does not exceed \$5 ~~exceeds 25% of the principal amount of the deferred deposit loan that~~

1 ~~is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.~~

2 (b) In addition to an administrative fee, the licensee is authorized to charge interest on the deferred
3 deposit loan in an amount that is not greater than 36% a year, which must be defined as a 365-day year. The
4 rate charged on the outstanding balance after maturity of a loan may not be greater than the rate charged during
5 the loan term. Charges on loans must be computed and paid only as a percentage of the unpaid principal
6 balance. "Principal balance" means the balance due and owing exclusive of any interest, service, or other
7 loan-related charges.

8 (3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a
9 fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular
10 check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection
11 is a licensee's exclusive charge for late payment. A licensee may not collect damages under 27-1-717(3) for an
12 insufficient funds check.

13 (4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date
14 on which the payment is due, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected
15 pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once
16 to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's
17 exclusive charge for late payment. A licensee may not collect damages under 27-1-717(3) for an electronic
18 deduction for which there are insufficient funds.

19 (5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be
20 awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered
21 into pursuant to this part."

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23 **Section 4.** Section 31-1-723, MCA, is amended to read:

24 **"31-1-723. Prohibited acts.** A licensee making deferred deposit loans may not commit, or have an
25 employee or other person committed commit on behalf of the licensee, any of the following prohibited acts:

26 (1) engaging in the business of deferred deposit lending unless the department has first issued a valid
27 license;

28 (2) threatening to use or using a criminal process in this or any other state to collect on the loan made
29 to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally
30 available to creditors to collect on loans in default;

1 (3) altering the date or any other information on a check received from a consumer;

2 (4) altering or changing the date upon which the licensee and consumer agreed to make any electronic
3 deductions from the consumer's account unless the consumer agrees in writing to the change;

4 (5) making any false, misleading, or deceptive representation to a financial institution relating to a
5 consumer who has agreed to provide payment for a loan through an electronic deduction;

6 (6) using any device or agreement that would have the effect of charging or collecting more fees,
7 charges, or interest than those allowed by this part, including but not limited to entering into a different type of
8 transaction or renewing or rolling over a loan with the consumer;

9 (7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit
10 loan;

11 (8) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether
12 a deferred deposit loan transaction is unconscionable, consideration must be given to; but is not limited to;
13 whether the amount of the loan exceeds 25% of the consumer's monthly net income.

14 (9) charging to cash a check representing the proceeds of the deferred deposit loan;

15 (10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred
16 deposit loan;

17 (11) using or attempting to use the check provided by the consumer in a deferred deposit loan as
18 security for purposes of any state or federal law;

19 (12) using or attempting to use the consumer's authorization to deduct the amount set forth in the loan
20 agreement or any other information obtained from the consumer or the consumer's financial institution for any
21 purpose other than to collect the proceeds of the deferred deposit loan;

22 (13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit
23 loan provided by the same licensee or any affiliate;

24 (14) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan
25 owed to the licensee, exclusive of the administrative fee and interest allowed in 31-1-722(2), exceeds a total of
26 \$300 when combining the face amount of the checks written in connection with each loan. Regardless of the
27 total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans
28 outstanding with the licensee.

29 (15) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of
30 another deferred deposit loan made to the same consumer. However, a licensee may without charge extend

1 the term of the loan beyond the due date.

2 (16) accepting any collateral for a deferred deposit loan;

3 (17) charging any interest, fees, or charges other than those specifically authorized by this part, including
4 but not limited to charges for insurance;

5 (18) threatening to take any action against a consumer that is prohibited by this part or making any
6 misleading or deceptive statements regarding the deferred deposit loan;

7 (19) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain
8 a license;

9 (20) including any of the following provisions in the loan agreement required by 31-1-721:

10 (a) a hold harmless clause;

11 (b) a confession of judgment clause;

12 (c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

13 (d) a mandatory arbitration clause;

14 (e) any assignment of or order for payment of wages or other compensation for services;

15 (f) a provision in which the consumer agrees not to assert any claim or defense arising out of the
16 contract; or

17 (g) a waiver of any provision of this part."
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19 **Section 5.** Section 31-1-724, MCA, is amended to read:

20 **"31-1-724. Civil remedies.** (1) The remedies provided in this section are cumulative and apply to
21 licensees, employees of licensees, and unlicensed persons to whom this part applies.

22 (2) Any ~~intentional~~ violation of this part constitutes an unfair or deceptive trade practice.

23 (3) ~~Any~~ A person described in subsection (1) found to have ~~intentionally~~ violated this part is liable to the
24 consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs
25 and attorney fees.

26 (4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from
27 violating any provisions of this part.

28 (5) The consumer may bring a class action suit to enforce this part.

29 (6) The remedies provided in this section are not intended to be the exclusive remedies available to a
30 consumer for a violation of this part."

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